UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1993/25/Add.1
30 December 1992

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Forty-ninth session
Item 10 (c) of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

Report of the Working Group on Enforced or Involuntary Disappearances

Addendum

Report on the visit to Sri Lanka by three members of the Working Group on Enforced or Involuntary Disappearances (5-15 October 1992)

GE.93-10036 (E)

CONTENTS

		Paragraphs	Page
Introduction		1 - 6	1
Chapter			
I.	CONTEXT OF VIOLENCE	7 - 14	3
II.	LEGAL AND INSTITUTIONAL DEVELOPMENTS RELEVANT TO DISAPPEARANCES	15 - 60	5
	A. Legislation relating to deprivation of liberty	15 - 24	5
	B. Developments regarding law enforcement forces and other groups involved in disappearances	25 - 33	7
	C. Habeas corpus and fundamental rights applications	34 - 39	10
	D. Humanitarian law and armed conflict	40 - 42	11
	E. Presidential Commission of Inquiry into Involuntary Removal of Persons	43 - 51	12
	F. Human Rights Task Force	52 - 60	13
III.	PHENOMENON OF DISAPPEARANCES	61 - 102	16
	A. Persons and groups affected	67 - 68	17
	B. Forces responsible	69 - 76	17
	C. Patterns and methods of detention	77 - 86	19
	D. Cases in which those identified as responsible remain unpunished; the question of impunity	87 - 97	20
	E. Concerns of the relatives: responsibility, death certificates and compensation	98 - 102	23
IV.	NON-GOVERNMENTAL ORGANIZATIONS, GROUPS AND INDIVIDUALS	103 - 107	25

CONTENTS (continued)

Chapter		Paragraphs	Page
V.	INFORMATION AND VIEWS PROVIDED BY GOVERNMENT OFFICIALS	108 - 119	26
	A. The question of violence	109 - 113	26
	B. The question of disappearances	114 - 115	27
	C. The death compensation scheme	116	27
	D. Draft law concerning temporary death certificates	117	27
	E. Draft law to establish a Human Rights Commission	118 - 119	28
VI.	CONCLUSIONS AND RECOMMENDATIONS	120 - 158	29
	A. Conclusions	120 - 130	29
	B. Follow-up to recommendations	131 - 145	31
	C. Recommendations	146 - 158	34

Annexes

I.	Conclusions and recommendations of the report of the Working Group on its first visit to Sri Lanka	36
II.	Cases transmitted to the Government of Sri Lanka for the period 1980-1991	44

Introduction

1. The three members of the Working Group on Enforced or Involuntary Disappearances who visited Sri Lanka in 1991, Mr. Agha Hilaly, Mr. Jonas Foli and Mr. Toine van Dongen, undertook a follow-up visit from 5 to 15 October 1992. On 27 February 1992, during the forty-eighth session of the Commission on Human Rights, the Chairman, on behalf of the Commission, had read a statement on the situation of human rights in Sri Lanka (E/1992/22 - E/CN.4/1992/84, para. 476) in which the Commission acknowledged the measures taken by the Government to address the human rights situation in the country. However, the Commission was seriously concerned at the human rights situation as presented in particular in the report of the Working Group (E/CN.4/1992/18/Add.1), notably the large number of disappearances. It called upon the Government to further intensify its efforts to ensure the full protection of human rights and also urged it to implement the recommendations of the Working Group. The Commission further welcomed the decision of the Government to invite the Working Group to visit the country again for the purpose, inter alia, of evaluating the progress of the implementation of its recommendations. The Working Group decided, in consultation with the Government of Sri Lanka, to undertake the follow-up visit in October 1992.

2. During its visit, the Working Group focused on changes which had occurred since its last visit, measures taken by the Government to improve the situation and the effect these have had on the issues of direct concern to the Working Group. In doing so, it took into account the overall situation of violence and factors, which would continue to allow such disappearances to recur in the future. This approach appeared to be the only practical one in view of the time limitations.

3. The members of the mission were received by the Prime Minister of Sri Lanka. They were also received by the Minister for Foreign Affairs, the Secretary of the Ministry of Foreign Affairs, the Secretary of the Ministry of Defence, the Presidential Adviser on International Relations, the Attorney-General and by the Honourable Chief Justice of the Supreme Court. They also met other senior government officials, the President of the Human Rights Task Force, the Chairman and other members of the Presidential Commission of Inquiry into Involuntary Removal of Persons. They also met with the Military and Police Joint Operations Command and other military and police officers including the commander of the Home Guards, the regional area commanders of the armed forces, the Inspector General of Police, and the police commanders of Trincomalee, Batticaloa, Amparai and Matara districts. In addition, they met local government officials in each of these districts.

4. The present report updates the issues examined in the previous report (E/CN.4/1992/18/Add.1). Chapter I updates the information on the context of violence throughout Sri Lanka in which disappearances occur. Chapter II refers to the legal and institutional framework relevant to disappearances as described by the authorities and members of the legal profession in order to elucidate the practical application of legal procedures and to assess their impact on the phenomenon of disappearances. Chapter III describes and evaluates the continuing practice of disappearances as apparent in reports of cases received by the Working Group, noting in detail the patterns caused or

exacerbated by structural problems. Its subsections deal with the issues of impunity and concerns of relatives of the disappeared. It also contains statistical information. Chapter IV discusses positions taken by non-governmental organizations and describes the circumstances in which they work. Chapter V contains information provided by officials of the Government to the Working Group. Chapter VI submits conclusions and recommendations.

5. The Working Group gratefully acknowledges that it has continued to receive valuable cooperation from the Government of Sri Lanka, both in the preparation of and during the visit, particularly from the Ministry of Foreign Affairs, the Presidential Adviser on International Relations and the Permanent Mission of Sri Lanka to the United Nations Office at Geneva. Requests for meetings with officials were readily granted; the logistical arrangements for the travel plans of the mission were efficiently carried out and no obstacles were encountered by the members of the mission in receiving representatives of non-governmental organizations, witnesses and relatives of missing persons.

6. An increasing number of abductions and killings have been reliably attributed to the Liberation Tigers of Tamil Ealam (LTTE) in the reporting period. But as follows from Commission on Human Rights resolution 20 (XXXVI) and as reiterated in its previous report on Sri Lanka, the Working Group under its mandate considers only cases of disappearances in which a person is detained against his will by officials of a branch or level of Government or by an organized group or private individuals allegedly acting on behalf of or with the support, permission or acquiescence of a Government. Abductions at the hands of non-governmental groups are not considered by the Group; nevertheless, they are an important element in its overall assessment of the situation prevailing in the country. All relevant information in this regard, as well as reports on other types of abuses ascribed to government forces, is transmitted to the competent Special Rapporteur or to the Working Group on Arbitrary Detention, as the case may be.

I. CONTEXT OF VIOLENCE

7. In its previous report on Sri lanka, the Working Group submitted a comprehensive description of the violence that has prevailed in various parts of the country since the 1950s. Chapter I of that report purports to provide an analysis of the historical, socio-economic and ethnic underpinnings of that context (paras. 7-40). The following paragraphs contain an update on the developments described in that report.

8. While the number of disappearances has diminished considerably during the last year, the scale and intensity of violence has increased. The conflict between the Sri Lankan armed forces and the LTTE continues in the north-eastern region, with an estimated 2,545 casualties among the combatants in the period between the two visits of the Working Group. In addition, 433 deaths have been counted among the civilian population due to direct attacks or collateral consequences, and hundreds of civilian deaths due to reprisals by the military, LTTE or Muslim Home Guards. Recent attacks by the LTTE against strictly civilian targets, such as the four Muslim villages in Polonnaruwa district (outside the established war zone), on 16 October 1992, left over 200 people dead, including women and children. A recent suicide bomb attack in Colombo, directed at Vice-Admiral Clancy Fernando, commander of the Sri Lankan Navy, killed not only him but other persons as well.

9. Numerous reports alleging abductions perpetrated by the LTTE were received by the Working Group, mainly from the Government, the Muslim communities of Batticaloa and Amparai districts and a few Tamil groups in Batticaloa and Amparai. Muslims, Tamils and Sinhalese continue to be cited as victims. Furthermore, a rising number of abductions alleged to have been committed by the LTTE and the existence of growing numbers of undesignated LTTE detention centres in the north-east were reported to the Working Group by some of the sources which have been reliably providing the Working Group with individual cases of disappearance.

10. In addition to reports of abductions, the Working Group was informed of numerous cases of alleged killings, including mass killings, by the LTTE. Reports indicate that often elderly persons, civilians and women and children are among the victims. This information indicates that the Muslim communities are recurring victims of LTTE violence.

11. On 29 April 1992, a group of about 150 persons led by some 40 LTTE members attacked the Muslim village of Alinchipatana, which has a population of 825 persons. Fifty-four persons were shot or stabbed to death in their homes. It was reported that the LTTE had attacked the police station and that most of the police retreated to the jungle. The LTTE then proceeded to attack civilians in their homes, thus murdering entire families of up to 13 persons. This incident apparently led to retaliatory attacks predominantly by Muslim Home Guards on the Tamil villages of Karapola and Muthugala in which a total of 88 persons were killed and about 150 homes were burned down. Other such retaliatory actions have taken place at different times. On 21 July 1992, a train in Batticaloa was attacked by the LTTE. Five Muslims, including small children, were pulled out and killed.

12. Furthermore, the Working Group was informed that numerous policemen are missing and are allegedly being held in LTTE detention camps. It has been reported that the International Committee of the Red Cross (ICRC) has been granted limited access to some individual policemen so detained.

13. Outside the established war zones, in the peaceful part of the country, the year 1992 has witnessed increased levels of political violence. Its perpetrators include both pro-Government and anti-Government elements as well as members of State agencies. Violence or threats of violence have been directed against participants of political rallies or demonstrations of one kind or another, against members of the academic world, the media, the legal profession, human rights groups and Buddhist priests. Some of these actions are explained by government officials as marking a resurgence of the People's Liberation Front (JVP) movement.

14. At present, intermittent negotiations between the Government and other parties concerned continue at different levels, both formal and informal. One important issue is how the LTTE is to be incorporated in the negotiating process and, if so, under what conditions. The future relationship between the north and east is the most important substantive item for the negotiations. In particular, discussions seem to centre around the extent to which power would be devolved to the regions and whether this will take place within a unitary or a federal State framework. Thus far, it appears that little progress has been made in these negotiations.

II. LEGAL AND INSTITUTIONAL DEVELOPMENTS RELEVANT TO DISAPPEARANCES

A. Legislation relating to deprivation of liberty

15. In its report to the Commission at its forty-eighth session (E/CN.4/1992/18/Add.1), the Working Group referred to special laws empowering government officials to deprive persons of their liberty, in particular the Prevention of Terrorism Act (PTA) and the Emergency Regulations (paras. 55-72). The Group therefore sees no need to describe these various rules again. However, a few general comments would seem appropriate.

16. In the last 11 years, for the most part, a state of emergency has been in force in Sri Lanka due to various conditions prevailing in the country, ranging from serious social unrest to full-scale armed conflict. Invariably, in any country, a state of emergency entails special measures to deal with problems relating to the maintenance of law and order and as a rule involves derogation from certain human rights standards. Sri Lanka is a party to the International Covenant on Civil and Political Rights. The Covenant, although admitting derogation from a number of rights when a public emergency arises threatening the life of a nation, clearly indicates that measures derogating from the obligations under the Covenant should be limited to the extent strictly required by the exigencies of the situation. Furthermore, the Human Rights Committee established by the Covenant holds the view that "measures taken under article 4 (of the Covenant) are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and that, in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogation can be made".

17. A number of basic human rights are stipulated to be non-derogable, i.e. even under a state of emergency their enjoyment may not be limited. The Siracusa Principles, an authoritative statement on the contents of article 4 and other limitations contained in the Covenant, provide a further elaboration of this matter. Attention is drawn, in particular, to the question of proportionality. Generally speaking, the principle of proportionality, in relation to human rights, implies that the enjoyment of these rights may not be curtailed further than strictly required by the exigencies of the emergency situation. The principle may also imply that a state of emergency is made to apply to only part of the territory of any given country.

18. In the report on its prior visit to Sri Lanka, the Working Group has made the point that the overall effect of the security legislation of Sri Lanka at the time was that it contributed appreciably to the incidence of disappearances (para. 194). Wide powers of arrest had been awarded under the security legislation for an increasing number of offences. The Group pointed out that when a large group of people can arrest and detain a large group of other people on the basis of suspicion of offences that are not sufficiently circumscribed, dispensing with almost all of the normal due process guarantees, disappearances are bound to occur (para. 196).

19. During its second visit, the Working Group received further information suggesting that the present body of security legislation is in fact conducive to disappearances and concomitant violations of human rights. In addition to the provisions described in its previous report, attention is drawn to the following, which may demonstrate the argument offered in the preceding paragraph.

20. Regulation 19 (A) provides that magistrates shall visit places of detention authorized by the Inspector General of Police located within their jurisdiction at least once every month and that every person detained therein otherwise than by order of the magistrate should be produced before him. There is no corresponding obligation of the police to inform magistrates of where such places are located or where the detainees are held and, according to information obtained from government officials and judicial authorities in Sri Lanka, magistrates have not been embarking on such visits on their own initiative. Thus, this provision has not been implemented since it was introduced in December 1989. As a result, the rules and the practice combined seem to allow too wide a latitude for maintaining undesignated detention centres. The existence of such centres, in the experience of the Working Group, is a key element in the persistence of disappearances.

21. The Emergency Regulations, while enlarging the powers of law enforcement officials and military forces in matters of arrest and detention, fail to contain provisions for the protection of persons against abuses committed by those forces in the exercise of such powers. They also require prompt information on all arrests to a judicial or other authority. The President of the Human Rights Task Force (HRTF) reported to have found in camps persons detained under PTA for more than 18 months without trial, persons detained under regulations 18/19 for more than 180 days, persons detained without detention orders and a number of persons whose release had been ordered by the Supreme Court but were still held in detention in camps and police stations. If nothing else, the report demonstrates the need to include in the emergency legislation strictly binding obligations upon officers in charge of their implementation.

22. Another factor to be considered in the matter of security legislation is that, as a general principle, the law of a country should be clear, unequivocal, consistent, accessible to the public, and uniformly applicable. This is true for security legislation as well. However, in Sri Lanka, the Prevention of Terrorism Act and the prevailing Emergency Regulations constitute a body of law that is quite confusing. The Working Group found that, specifically in the field, among the police and the military, a proper understanding of the rules contained in that body of law was not fully adequate. Thorough knowledge of the rules regarding arrest and detention, for example, was found to be lacking in different instances. The problem is compounded by the fact that, following their entry into force, the actual text of the emergency regulations is not effectively promulgated until some time later and is, even then, not easily accessible to the general public or even to lawyers. In fact, fully up-to-date sets of such texts are rarely available even to those responsible for the administration of justice. A private group is keeping track of the present state of the law in this regard.

23. For the reasons outlined above, it would therefore seem opportune if the Government of Sri Lanka, in an effort to stem the tide of disappearances, undertook an exhaustive overhaul of its security legislation with a view to adjusting its scope strictly to the exigencies of the situation. In other words, the Government would examine whether, first of all, the content and purport of that legislation as it stands are in conformity with article 4 of the International Covenant, to which Sri Lanka is a party. Furthermore, it would examine how, even within those Conventional parameters, the objectives of the state of emergency might be achieved with the least possible limitation on human rights.

24. The Working Group received information on studies being conducted by the Centre for the Study of Human Rights of the University of Colombo on the Emergency Regulations, with a view to making relevant recommendations to the Government in order to bring those regulations in line with international standards. A number of highly placed government officials, in their private capacities, joined a task force discussing draft recommendations to that effect.

B. Developments regarding law enforcement forces and other groups involved in disappearances

25. The members of the Working Group met military and police authorities in Colombo and in all the other cities visited by it, e.g. Trincomalee, Batticaloa, Amparai, Kalmunai and Matara. In its report on the first visit (paras. 76-81), law enforcement officials and other groups reportedly involved in disappearances were mentioned. The fact was stressed that a large number of such officials empowered to arrest, detain, interrogate and transfer detainees and paramilitary groups supporting their operations were sometimes allowed to use uniforms, equipment and premises of the armed and police forces.

26. The information received in Sri Lanka during the Working Group's second visit shows that most of the forces mentioned in that report continue to exist, while the general power structure established under the state of emergency remains unchanged.

27. In particular, the existence of undesignated detention centres may still be a problem. In any event, unrecorded operations of numerous police and military agencies dealing with detainees make it difficult to trace the whereabouts of persons in custody. The question of undesignated detention centres continues to be of concern to the Government itself. A circular issued by the Inspector General of Police on 13 September 1991 to all branches of the police states: "According to ICRC, there are still places of unauthorized detention in a few police station areas. Although, according to the same source, the number of such places has come down, it is a matter for concern if such places still exist". The circular further states: "It was also reported that certain detainees are not made available to ICRC delegates at their visits. In certain cases, in the morning of the visits, the

detainees are taken away from police stations and hidden from the ICRC. According to the mandate given to the ICRC by the Government they should have access to all detainees and any action to the contrary would be infringement of this mandate".

28. During its visit, the Working Group received from the military authorities (national and local) copies of a number of circulars regarding steps taken to improve discipline and the awareness of human rights among the armed and police forces, as well as instructions that may ensure an improved control of arrests, detentions, transfers and release of detainees. They are mainly aimed at limiting the abuses committed in the past and to controlling officers and paramilitary groups which may have acted with extreme violence and sometimes beyond instructions received from higher authorities.

29. Among the measures taken by the Government are instructions issued by the highest military and police authorities to their subordinate agencies whose personnel has, in some cases, received special training as to how to implement those instructions. Such instructions include:

(a) Facilities, access to detainees and information to be provided to ICRC and to the Human Rights Task Force (HRTF), which was established to monitor detentions and the situation of detainees (see below);

(b) Certificates regarding the arrest of a suspect to be issued to family members or the Citizens Committee, when persons are detained during cordon and search procedures;

(c) Registers of arrests and detentions to be maintained in every camp detachment and in all roadblocks and checkpoints, which should be available for inspection at any given time;

(d) The release from custody of the detainees to a family member or a member of the Citizens Committee;

(e) The visible and clear identification of personnel (the insignia of the battalion or detachment to which the soldier belongs should always be used; however, it maybe dispensed with under certain circumstances) and vehicles during operations;

(f) Immediate communication of arrests to the next higher headquarters (including name, place of arrest and brief statement on the circumstances of arrest);

(g) The handing over of persons arrested to the relevant authorities without delay; and

(h) Obtaining a detention order issued by the Assistant Superintendent of Police for 90 days within 24 hours of the arrest, or a detention order signed by the Minister for Defence, valid for 18 months (renewed every 3 months) within 3 days of arrest.

30. Of course, the above measures can only be meaningful to the extent they are implemented. The Working Group found that some of them are not implemented or not completely being applied.

31. In meetings held with the Ministry of Defence and the highest military and police authorities, the members of the mission were informed that the police is a civil department of Government but placed under the authority of the Minister of Defence. When a zone is cleared by the army, it is handed over to the police. This has been done in all the southern provinces as well as major towns and cities in the east. There, the police is the only force authorized to effect arrests. In the north and rural areas in the east, which are conflict areas, the armed forces are empowered to arrest persons, but they must hand them over to the police for investigation. However, delays often occur in conflict areas owing to temporary practical difficulties or confusion. According to instructions issued to the military, all detentions must be recorded and reported to the Joint Operational Command (JOC), which possesses a general registry of detentions throughout the country. The police stations are required to report to police headquarters in Colombo which in turn reports to JOC. The JOC is in contact with the HRTF. However, the JOC has not systematically and regularly supplied the HRTF with information about detentions.

32. Sometimes, information about detainees may not be released for intelligence reasons, so that some persons are held for one or two months without their detention being disclosed. In these cases, the detention is recorded only when a detention order has been obtained. A detention order must be requested from the relevant authority within the terms indicated in the written instructions. The process of obtaining a detention order is handled by the police.

33. In several cities in the east and south of the country, the Working Group visited detention centres: a prison called Plantain Point run by the military forces in Trincomalee, and the Batticaloa prison, also run by the military. They also held meetings with local military and police authorities in all places visited by them. They found that:

(a) Records of detention were available in both of the detention centres; however, they were not always completely accurate and their system for recording detentions made it difficult to establish the situation of each of the detainees. It was evident that not all detainees were there under a detention order, even after several weeks of detention. In addition, records of detention are not centralized at a local level, so that the police force is not aware of persons detained by the military forces;

(b) Arrests and detentions are reported by both the military and the police to their headquarters in Colombo or to the Joint Operations Command, but not to the HRTF;

(c) Transfer of detainees is a common occurrence, either for interrogation by the police or the army, to remove them to a different place of detention or to bring them before a magistrate. These transfers are not always recorded, particularly if they are numerous and of short duration;

(d) In every police station or military premises, places of detention exist which are not officially recognized as such, for instance at the Trincomalee army compound, where detainees were said to have been held for short periods;

(e) The police are in charge of obtaining detention orders but they are not always aware of transfers or of the whereabouts of the detainees;

(f) In the conflict areas, in principle, family members are not given information directly by the authorities in detention camps or prisons. Generally, information is provided to ICRC, which informs relatives of the whereabouts of the detainees.

C. Habeas corpus and fundamental rights applications

34. In the report on its first visit to Sri Lanka, the Working Group described a number of elements related to legislations and procedures for habeas corpus and fundamental rights petitions (E/CN.4/1992/18 Add.1, paras. 46-54). During its 1992 visit, the Working Group was informed that according to the thirteenth amendment to the Constitution, provincial High Courts have jurisdiction to issue orders in the nature of habeas corpus, in respect of persons detained illegally within their provinces.

35. During its first visit to Sri Lanka, the Working Group received a communication from the Attorney-General which stated that during the years 1988-1990 a large number of habeas corpus applications had been made to Court. In the majority of these cases the State had acknowledged the arrest and detention of the corpus and furnished to Court the material upon which the arrest and detention was sought to be justified. The communication noted, however, that on many occasions the relatives failed to come forward and give evidence. There was no justification at that time for supposing that the relatives were frightened to come forward. There was, therefore, reason to conclude that in those instances the relatives were unable to substantiate their allegations and that the original complaint was false.

36. Some lawyers' organizations in Sri Lanka have expressed a different view of the situation. In 1992, these organizations stated that in the process of filing habeas corpus applications startling facts had been brought to their notice amounting to gross human rights violations. Very rarely in cases of missing persons had the State been able to answer the petitions affirming the whereabouts of the corpus. In almost 98 per cent of the cases the State/security officers had, point blank, denied arrest, in spite of many instances where the security officials responsible for arrest had been very clearly identified by the petitioners.

37. The latter statement was substantiated by several examples of arrests made before witnesses (sometimes entire villages) and detentions in which the person was seen in custody by witnesses, yet the arrest was denied by government officials. The lawyers' organizations confirmed that relatives or witnesses often failed to come forward and give evidence but they alleged that this was due to fear of reprisals. In such instances, lawyers brought to the notice of the court that the informant wished to remain anonymous.

38. The lawyers also informed the Working Group that in the great majority of cases of disappearance where the arrest was clearly established in the first instance, the State filed objections stating either that the missing person had escaped from custody or had been killed while attempting to escape or had been released. Several examples were given to substantiate this information, including the case of a person who allegedly had been killed in a shoot-out, but who was seen at a hospital by a relative three weeks later.

39. In relation to fundamental rights petitions, the members of the Supreme Court who met the Working Group indicated that a large number of such petitions had been filed by those who were detained in various detention camps and that, adopting a new approach, the Supreme Court had decided to entertain such petitions. Innovative procedures had been devised and procedures were simplified so as to inquire into the grievances of the petitioners. Copies of the petitions were sent to the Bar Association of Sri Lanka and the Attorney-General so that they could take the necessary steps before the applications were listed in court. The Bar Association nominated an attorney-at-law to appear on behalf of the petitioner in each case. Those lawyers had to visit the various camps and interview the petitioners. They also had to meet officers of the Attorney-General's Office and discuss matters pertaining to the petitions before the cases came up before court.

D. Humanitarian law and armed conflict

40. The increasing levels of violence related to the armed conflict have caused suffering not only to the combatants, but particularly to civilians and other persons not actively engaged in armed conflict. Such suffering has included disappearances. This situation would seem to indicate the necessity for all groups to abide by the minimum humanitarian standards for non-international armed conflicts as set out in article 3 (common) of the Geneva Conventions of 12 August 1949 to which Sri Lanka is a party. Under these standards, while hostilities take place, distinction should be made between combatants and civilians and acts of reprisal avoided. Furthermore, acts or threats of violence whose primary purpose is to spread terror among the civilian population are prohibited.

41. The Working Group suggests that the Government of Sri Lanka take into consideration the ratification of Additional Protocol II as soon as possible. The protocol supplements and develops article 3 common to the Geneva Conventions of 12 August 1949. The implementation of international humanitarian law standards, as is well known, has a purely humanitarian purpose and does not give any specific juridical status to the parties involved, nor does it change the legal nature of the relations between or among parties so engaged. It may not be invoked either for the purpose of affecting the sovereignty of a State or the responsibility of the Government to maintain or re-establish law and order or to defend national unity of the State by all legitimate means. It may further be recalled that the application of the laws of war as set out in Protocol II balances humanitarian requirements with the need for State security.

42. The implementation of these humanizing standards may contribute to an atmosphere conducive to fruitful peace negotiations and leaves the relationship of the negotiating parties and the terms of the negotiated peace to those concerned.

E. Presidential Commission of Inquiry into Involuntary Removal of Persons

43. The terms of reference of this Commission were described by the Working Group in its first report (see paras. 89-94). The Commission was appointed on 11 January 1991 by the President of Sri Lanka to inquire into and report on complaints of alleged involuntary removal and/or subsequent lack of information of the whereabouts of the persons so removed, during the period 11 January 1991 to 10 January 1992. Subsequently, the term was extended to cover cases occurring during the period 11 January 1992 to 10 January 1993.

44. The members of the Working Group met again with the Presidential Commission and several members of its staff. The Working Group received oral and written information providing further clarification about the powers of the Commission and its procedures.

45. The Commission lacks penal power; it has, however, ample investigative faculties (see paras. 92 and 93). The findings of the Commission are reported to the President, who decides whether to publish them. The procedures of the Commission conform in principle to the Commission of Inquiry Act (the Commission was established in pursuance of that Act), which stipulates the powers of the Commission, confers upon its members the status of "public servants", establishes that failure to obey a summons or to give evidence to the Commission is considered an offence of contempt, confers privileges and special immunities for witnesses before the Commission and allows representation of persons by attorneys-at-law.

46. According to a document handed to the members of the Working Group, the Commission received reports on 406 cases occurring between 11 January 1991 and 10 January 1992 and 47 cases occurring between 11 January 1992 and 30 June 1992, i.e. a total of 443 cases. In 9 of these cases (received by letter), the complainants had failed to appear at the office when requested to do so; in 49 cases the persons had been traced; and in 6 cases public inquiries had been completed. In other cases investigations were continuing.

47. In view of the low number of disappearances for which public hearings had been held, the Working Group asked the members of the Commission whether it was possible to expedite procedures. The members replied that the procedure was slow but was the only one available as the Commission was bound to remain within the parameters set by the Commission of Inquiry Act. Although the Commission had no competency to decide on prima facie cases and had no punitive powers, there were certain legal consequences that might follow by reporting the case to the President, e.g. interdiction, release from duties, dismissal from post, etc.

48. The task of the Commission was to ascertain the truth of the complaints brought to it, to identify the persons or groups responsible and to recommend steps to be taken; it did not include further investigating the fate or whereabouts of those detainees who were not found in custody. According to its members, some detainees were located by the ICRC months after the police or military had denied the detention. They could not obtain evidence on what happened to the person: only those responsible know what happened. No records were kept at the police stations, the trace of persons was lost during transfers and the police and military forces always denied responsibility; they had to go through all the evidence as to what happened to the person until he was last seen and decide as to what particular person was responsible. In view of this, the members of the Commission saw their task as having mainly a preventive or deterrent effect.

49. The Working Group was informed that the Commission's task was to carry out investigations regarding responsibility for disappearances and that it was empowered to recommend cases for further investigation or prosecution. Of the six cases completed by the Commission in almost two years of existence, only one investigation was disposed of by the Attorney-General. In that case, the Criminal Investigations Department had investigated and submitted its findings to the Attorney-General, who then began murder proceedings against a certain police officer. The Presidential Commission, in a separate procedure, concluded later that there was not enough evidence to hold the officer responsible. Subsequently, the Attorney-General dropped the charges.

50. In other cases, the Commission clearly identified those responsible. However, in none of those cases had criminal proceedings been initiated against them. The Working Group was informed by the Attorney-General that in relation to such cases, the Criminal Investigations Department had not yet completed further investigation.

51. Finally, the Working Group notes that up until the present time, the Commission has exclusively considered cases of disappearance imputed to the police, and none which occurred as a result of action by the military.

F. Human Rights Task Force

52. In its first report, the Working Group described the establishment and functions of the Human Rights Task Force (HRTF) and said that "its obligation to prepare a full and comprehensive list of all detainees (see para. 86) makes it significant in dealing with the problem of disappearance, as one of the factors facilitating disappearances may be the lack of proper mechanisms for recording detentions as they take place and of a central directory of detainees".

53. The HRTF published a report on its activities covering the period 10 August 1991 to 10 August 1992, which was received by the Working Group prior to its visit to Sri Lanka. In its report, HRTF indicates that 6 official detention camps, 6 rehabilitation camps, 138 police stations and 10 army camps, holding a total of 7,356 detainees, were visited during that period; 406 detainees were held in police stations and 377 in army camps. The report also contains information on complaints of torture and assault,

mainly during the initial period of detention, and detainees who were seen in bandages and plaster. However, the HRTF has found that, in general, the detainees were well treated. In some detention centres, persons were being detained without a detention order, along with persons whose release had been ordered by the courts and others who had been detained under emergency regulations for lengthy periods without a trial. In this regard, the HRTF, in consultation with the Bar Association of Sri Lanka, challenged particular cases of detention, resulting in the release of about 200 persons, and urged the Government to look into the cases of the detainees and set up a scheme of release.

54. The report also states that 93 missing persons had been found in camps and police stations, of whom four were on the Working Group's lists; this information has been sent to relatives for comments.

55. The HRTF has done very valuable work. Its Chairman has personally visited a large number of detention centres and established a long list of detainees. Relatives and other interested persons have been provided with lists which have been personally verified by the HRTF and are available for consultation. However, according to the Chairman himself, many detention centres throughout the country had not yet been visited, and he could not indicate the precise number of detention centres in Sri Lanka, as he had been unable to secure a complete list of such places.

56. Concerning lists of detainees, the regulation setting up the HRTF requires that "the person having custody of such person shall cause a copy of the order under which such person is being detained to be served on the Human Rights Task Force". This wording raises three problems:

(a) Arrests under emergency regulations 18/19 may not be covered, as detention orders are not necessarily required under these regulations;

(b) It does not specify any time-limit within which the information must be conveyed to the HRTF, were it only by adding the word "promptly";

(c) It does not provide that the person having custody of the detainee must inform the HRTF of any transfer or release. The report of the HRTF does not say whether this requirement to serve copies of detention orders is in fact complied with.

57. The HRTF Chairman said that most police stations had given him access to detainees and that he could verify that the police and the army had records of detainees, but they did not generally provide him with such lists. It was clear to the members of the Working Group that HRTF had used time-consuming methods to obtain information on detainees while computerized records were available at the Ministry of Defence which could easily be transmitted daily to HRTF.

58. The attention of the Working Group was drawn to the fact that the report of HRTF made no mention that it had not been provided with a list of all places of detention. This was confirmed by the Chairman of the HRTF, who told the Working Group that he had found other places of detention thanks to

private communications that had come to him. Those places are sometimes known to detainees (who had been temporarily held there) or to neighbours. He had recently located two unacknowledged detainees in an undesignated camp indicated to him by other detainees he met while visiting a police station.

59. The HRTF has a staff of 34 and a round-the-clock service is maintained. It has three regional centres in Mattara, Batticaloa and Kandy, which are also open 24 hours, and four more contemplated at Vavuniya, Anuradhapura, Trincomalee and Badulla. The Working Group visited the Batticaloa centre, where it met with the person in charge of the office who indicated that the main task of the centre was to receive complaints and to help persons searching for their relatives. However, he had no access to any detention centre in Batticaloa and had been instructed not to try to visit them himself. For any visit, he must be accompanied by the Chairman. He added that he did not receive any lists or records of detainees either from the local military base nor from the local police.

60. The Working Group found that the working methods of the regional officers did not facilitate the speedy determination of the whereabouts of detainees. Such methods also involved a waste of time and resources, since the local officer could easily obtain direct information from police and military authorities in the field, gaining time and saving resources that could rather be used for other regions where local HRTF offices do not exist.

III. PHENOMENON OF DISAPPEARANCES

61. Since the establishment of the Working Group in 1980, 6,716 cases of disappearances alleged to have occurred in Sri Lanka have been reported to the Working Group by non-governmental sources and have been transmitted to the Government of Sri Lanka. Cases reported to have occurred since 11 June 1990, the date of resumption of hostilities with the LTTE, have taken place primarily in the eastern and north-eastern regions of the country.

62. In addition to the 6,716 cases already processed by the Working Group and transmitted to the Government, a large number of cases received between 1990 and 1992 are currently being processed for transmission to the Government. These include nearly 5,000 cases which occurred in the Southern and Central Provinces between 1988 and 1990 and nearly 2,000 cases in the north-east since June 1990. Significantly, over 30 cases alleged to have occurred since June 1990 in the South were transmitted to the Government.

63. The Working Group was glad to note that the number of cases of disappearance throughout Sri Lanka have been greatly reduced since its first visit. The following analysis of the phenomenon is set out in the hope that it may highlight the elements which still require continued vigilance and remedial action.

64. During its conversation with a high-ranking official, the Working Group was told that although some disappearances had taken place, it was highly doubtful that anywhere near 13,000 persons had disappeared. The explanation was that most of those reported to have disappeared were in fact terrorists who had been killed in combat or members of terrorist groups killed in internal disputes within their own ranks. Furthermore, sometimes relatives of persons killed in combat far from their homes or recruited involuntarily by terrorist groups report the person as having disappeared so that the authorities would be forced to undertake a search for the persons concerned. High-level military authorities added that if a person is forcefully recruited by the LTTE the family often reports that the army had taken the person, and that many other cases of disappearance are in fact due to killings in the context of the Muslim-Tamil conflict.

65. During this visit the Working Group received, as it had done during its first visit, individual testimony from relatives of disappeared persons in Trincomalee, Batticaloa, Amparai and Matara districts. Cases of disappeared persons presented by the relatives to the Working Group were accepted for checking and processing as usual. Like last year, it was impossible to interview all the persons who wished to meet the Group personally to present cases of disappeared relatives; for this reason, although all written applications were accepted, the non-governmental organizations working on behalf of the relatives were again requested to select a certain number of representative cases for personal interviews, particularly cases alleged to have occurred since the last visit of the Working Group. In addition to these more recent cases, other well-documented reports of disappearances were handed directly to the Working Group by relatives of the disappeared.

66. The Working Group also received testimony from relatives of police and other civil servants in Matara who were alleged to have been killed by the JVP in the southern districts between 1988 and 1990.

A. Persons and groups affected

67. According to the cases received by the Working Group since 1991, in the north-east, the persons most often reported detained and missing continue to be young Tamil men accused or suspected of belonging to, collaborating with, aiding or sympathizing with the LTTE. Tamil persons internally displaced due to the conflict and who are staying in informal shelters such as church or school centres are the group particularly at risk of detention and disappearance. In addition to young men, the Working Group has received cases of women, children and infants having been detained and subsequently disappearing from these centres.

68. The missing persons include teachers, students, farmers, business persons, fishermen and family members of persons taken into detention, with the poorest sectors continuing to be the most affected.

B. Forces responsible

69. For the years 1991 and 1992, sources have indicated the forces cited in the following paragraphs as responsible for disappearances in cases transmitted by the Working Group to the Government.

70. The Working Group was informed that in the north and east, it is the armed forces that have jurisdiction to carry out arrests (see supra chap. II, para. 31). Only after such arrests are persons handed over to the police for investigation and, if the person is retained in custody, the case is then handed over to the police for issuance of a detention order. Nevertheless, the cases received and processed by the Working Group for transmission to the Government indicate that in Trincomalee, Batticaloa and Amparai districts, as noted above, it was the Special Task Force of the police which carried out many of the detentions.

71. The Working Group also received and transmitted to the Government two cases of disappearance in Gampaha district alleged to have been carried out by the police. On 14 December 1991, a student and one other person from Millate, Kirindiwela, was abducted by a group of approximately 20 police who were travelling in four official jeeps. It was reported that the Deputy Inspector General (DIG Ranges) of Kurunegala, the Senior Superintendent of police in Kurunegala and the Chief Inspectors of the Maho and Gampaha police all denied knowledge of the detention, and the persons' whereabouts are still not known.

72. Furthermore, many of these disappearances have been carried out by the police in the villages (where the police are the authorities in command; see supra, chap. II, para. 31) or in the "refugee" centres. Thus, according to the cases received, most of the disappearances did not occur in rural areas during armed confrontations where confusion might lead to delays in or an inability to register and report cases of arrests or detentions.

73. In some cases the Special Task Force reportedly acted alone; in other cases reported to the Working Group, they carried out the detentions during joint operations with the military. Inasmuch as the police have recently been brought with the armed forces under the Joint Operations Command (JOC), this pattern is of particular concern to the Working Group because it re-establishes a component of the system existing in the Southern Province between 1988 to 1990 that made possible the disappearance of thousands of persons.

74. The Muslim Home Guards were also named in many cases as forces responsible for disappearances. The Government of Sri Lanka reported during the forty-eighth session of the Commission for Human Rights that the Home Guards, disbanded by the Government, had ceased to exist. During its visit to Sri Lanka, the Working Group was told by high-ranking military officials that the Home Guards continued to operate, trained by the army, armed only with pistols and given orders that their function was to protect the immediate vicinity in and around their towns (see supra, chap. II, para. 25). In many well-documented 1992 cases in Batticaloa and Amparai districts transmitted by the Working Group to the Government, the Home Guards were alleged to have acted in conjunction with the military and/or police in the actual detention or abduction of persons in or around villages and were reported to have been armed.

75. On 24 August 1992, 13 persons in or around the village of Thiyavaddavan, Batticaloa district, were allegedly detained by Central Camp police officers believed to be members of the Special Task Force and who were accompanied by a group of the Muslim Home Guard attached to the Twelfth Colony Navithanveli of the army. Witnesses reported to the local army commander, who denied knowledge of the detentions. These persons remain missing.

76. The Tamil Ealam Liberation Organization (TELO) and the Ealam People's Democratic Party (EPDP), "auxiliary" Tamil groups stated to be opposed to the LTTE (see E/CN.4/1991/18/Add.1, para. 114) have also been cited in numerous recent cases as having been responsible for the disappearance of persons in Batticaloa and Amparai districts. Government forces stated that these paramilitary groups were not being armed or put in uniform, but used by the army to identify subversives or persons suspected of being subversives in the field. Cases received by the Working Group corroborate the fact that they are used by the army or police personnel who are from other regions and/or other communities to identify persons to be detained. In many cases, however, TELO and EPDP members were identified in military uniforms and with military arms, having actively participated in the detentions. These groups are also reportedly trained by the military. The Special Forces Brigade, another armed non-military group operating on motorcycles, was reported to have been increasingly active in the north-east.

C. Patterns and methods of detention

77. Testimony of relatives of missing persons and other information received indicate that although the numbers are fewer, the pattern of disappearances in the north-east does not differ from that which previously existed in the south, nor has the pattern altered since the previous visit of the Working Group.

78. Information from the Government and other sources was consistent that in the north-east as well as (the few cases still reported) in the south, when a basis for a detention is noted in the registry files, it continues to be on the authority of the Prevention of Terrorism Act which allows arrest "on suspicion". In many cases logged in the registry files which were examined by the Working Group during its recent visit, no basis for detention was noted and it was impossible to determine in many of these cases whether there had been a request for a detention order. Upon examination of the registry files in Batticaloa prison, run by the military, where it was apparent that real efforts were made to maintain the registers, the Working Group found in the prison one person who according to the register had been released. Another person who was recorded as being in the prison was not found there and no information regarding the status of his detention, release order or his whereabouts could be obtained either through regional authorities or the JOC in Colombo. It was also learned that neither of the cases had been reported to the HRTF either on the regional level or by the JOC.

79. The Working Group was informed that cordon and search operations continue to be the most frequently utilized method of detention in the north-east. In such operations, the army, often in conjunction with the police, and particularly the Special Task Force, go into a village or a rural area and detain scores of persons, usually young men but at times women, children or even entire families. Many are then released within 24 to 48 hours. A percentage of the persons remain in custody for questioning.

80. On 30 April 1992, the army battalion from the Pullumalai army camp in Batticaloa conducted a search and cordon operation in and around the Rugam village in Batticaloa district. They detained over 40 persons from their homes or farms, 20 of whom were released the same day and others within 48 hours, except for 17 persons, who remain missing.

81. The Prevention of Terrorism Act in its present form seems in practice to be conducive to disappearances, as it allows incommunicado detention in any place whatsoever for up to 90 days without the involvement of a magistrate.

82. In addition, the Working Group was told by army officials that they may hold a person for up to two weeks before making the detention official and bringing the person before a magistrate as required by emergency regulations. The reasons stated for this practice is to derive maximum advantage from the possibility for gathering intelligence.

83. In a 1991 case, a student was detained and taken to the Kamburupitiya police station in Matara district in the Southern Province where he was seen by his mother. Two days later the mother was told that her son had been taken

to the Matara police station; however, the Matara police denied having him in their custody. Months later, she was informed that it had been necessary to take her son to Colombo for further investigation. The mother continued to make inquiries and was finally told by the Assistant Superintendent of police in Matara that "her son was no longer among the living" and that she should stop her efforts to locate him.

84. The problem of repeated transfers as an element of the phenomenon of disappearances has also continued since the Working Group's last visit. The HRTF informed the Working Group that it had been able to keep track of many detainees when they were confined in one acknowledged place of detention but that once a person was transferred one or more times, it often became impossible to follow the circumstances of that person.

85. This pattern was clear in a recent notable case that was initially a disappearance: on 9 October 1992, the Supreme Court granted compensation under a fundamental rights petition to a student who had been illegally detained for three years. He was abducted on 10 October 1989 in Kegalle by a group of unknown persons. He was taken to the Kegalle army camp, then to the Kalapaluwawa army camp and some time later to the Boossa army camp. From Boossa he was taken to the Pallekelle army camp where he was held until 7 August 1992. Although at some point during the three years the case became an acknowledged detention, and although the missing person has been among the very few who have survived a disappearance to initiate a fundamental rights petition, the pattern of continual transfers through 1992 demonstrated that this case is of substantial concern to the Working Group. Other facts of the case are demonstrative of ongoing patterns that facilitate the phenomenon of disappearance: it appears that the person was never, during the entire three years until August 1992, produced before a court of law. The petitioner was not told the reason for the detention, nor of the charges supporting the continued detention. The Court determined that he had never been involved in any illegal activities.

86. Although the Working Group is cognizant of the problems faced by the Government in maintaining law and order during periods of internal armed conflict and in areas where terrorism is being perpetrated, the patterns described in the above cases are not confined to situations related to the conflict or to terrorism. In a case brought in 1992, it was alleged that police officers of the Criminal Investigation Branch at the Kadawatha police station caused the disappearance in 1991 of two persons detained and being interrogated as suspects in a robbery case.

D. Cases in which those identified as responsible remain unpunished; the question of impunity

87. The Working Group has repeatedly stated that perhaps the single most important factor contributing to the phenomenon of disappearances is that of impunity. Perpetrators of human rights violations, whether civilian or

military, become all the more brazen when they are not held to account before a court of law. Impunity can also induce victims of this practice to take the law into their own hands, which in turn exacerbates the spiral of violence. The Working Group feels that steps taken by the Government to deal with the question of disappearances have failed to address sufficiently the question of accountability, which is the most important means for the prevention of human rights violations.

88. During the Working Group's first visit to Sri Lanka, it was informed about the few cases of disappearance where those responsible had been the subject of an investigation or had been brought to trial (see E/CN.4/1992/18/Add.1, para. 89). The information so provided led the Working Group to the following recommendations in its prior report:

> "... The Government should prosecute more rigorously those responsible for disappearances and require that severe disciplinary punishment be meted out to government officials who have failed to take adequate measures to prevent disappearances ... . Acts found to involve grave violations of human rights, such as disappearances, should not benefit from indemnity legislation; Human rights records of members of the armed forces and the police should be taken into account in the consideration of promotions ... . Members of these forces under investigation for involvement in cases of disappearance should be suspended from active duty until inquiries are completed ..." (para. 204).

89. By note verbale dated 20 August 1992, the Government of Sri Lanka sent to the Working Group a report on the implementation of its recommendations and, in connection with the prosecution of those responsible for disappearances, mentioned cases dealt with by the Presidential Commission on Involuntary Removal of Persons. The Government also reported that indemnity legislation (see paras. 73-75) ceased to be operative from December 1988 and would not be renewed, and that the issue as to whether disappearances before December 1988 should be excluded from indemnity was under consideration.

90. The Government also provided a copy of the instructions circulated to all police authorities, divisions and stations on the protection of witnesses and the duty to ensure their presence in court and the investigation of complaints regarding offences committed or attempted against them due to the fact that they were witnesses.

91. An important example of the prevailing climate of impunity is the Embilipitiya case, in which 31 students were detained and subsequently disappeared in 1989 and 1990.

92. During its recent visit to Sri Lanka, the Working Group received further testimony regarding this case. The Working Group was told by the Government that these 31 students were not suspected of being JVP supporters and that the

detentions were carried out for other motives, possibly personal. According to sources, the disappearances were made possible by the instructions of local authorities to purge the schools of JVP supporters through the use of informants.

93. In 1992, the Human Rights Task Force conducted an investigation into this case. Subsequent to the investigation, the principal and seven members of the army, including one high-ranking official, were identified as those allegedly responsible. None of them has been brought to trial, arrested, held as suspect or questioned. The Working Group was told by the Government that as a matter of strategy in the case, the principal had not been arrested in order to question the high-ranking military officer first. The officer, however, had not been arrested or even questioned because he had been sent to the conflict in the north. Four of the other army personnel were also said to be in the north. It was not known where the other three allegedly responsible persons were. The principal, though briefly removed from his post on charges of accepting bribes, is now reinstated and is said to be in line for promotion.

94. More generally, in relation to the investigation of crimes involving serious human rights violations such as disappearances, the Working Group observed that only in a very limited number of cases were those found responsible punished or administratively penalized. On the contrary, several cases of promotion of police personnel accused of being responsible for disappearances were reported to the Working Group. All cases referred to by the Government in its report, i.e. cases investigated by the Presidential Commission of Inquiry into Involuntary Removal of Persons which occurred after 10 January 1991, continue to be under investigation although very precise evidence has been obtained by the Presidential Commission and those presumed responsible have not been removed from their functions or otherwise penalized as yet.

95. During its visit, the Working Group was informed by various authorities that offences involving government officials were being investigated by the Criminal Investigation Department (CID) of the police. The majority of persons under investigation for human rights violations belong to the police (including its special units), and, according to various non-governmental observers, investigations are delayed for years and rarely come to a conclusion.

96. On the basis of the conclusions of the Presidential Commission and court decisions on criminal cases involving human rights violations, it would appear to the Working Group that certain police officers summoned by the Commission, as well as the police force itself, tried to obscure evidence in order to cover up not only their own responsibility, but also that of their colleagues and superiors.

97. The Group is compelled to express its disappointment concerning the follow-up of a number of important cases such as those of Richard de Zoysa and the disappearance of 31 students at Embilipitiya. These cases demonstrate that the authorities tolerate the underlying questions as to how disappearances occurred to remain without an answer and to retain those responsible within the system, unpunished.

E. Concerns of the relatives: responsibility, death certificates and compensation

98. The relatives of the disappeared voiced many concerns during their meetings with the Working Group in 1991 and 1992. Among these was the need for death certificates and compensation for violations of human rights.

99. The one overriding aspect stressed by the relatives as well as by the organizations of the families of missing persons was that while administrative procedures to allow families to recover money, work and social benefits or to allow persons to remarry were important, and that while compensation was an important acknowledgement of a wrong suffered, there was no substitute for accountability; representatives of the families stressed the importance of a clear public statement by the Government acknowledging the full extent of disappearances in Sri Lanka. They further emphasized the need for clarification of all cases of disappearance to the best of the Government's ability. Finally, they insisted that all those responsible should be sentenced and not pardoned afterwards.

100. The presumption of death after seven years has proved to be a problem for many of the relatives of missing persons who wish to gain access to funds held in bank accounts, to receive work pensions due the missing person or their dependants or to be eligible for social benefits, as well as to remarry legally. For this reason, it was proposed that the time-limit for acquiring the death certificate be considerably shortened. A period of six months was first proposed in Parliament; a one-year period was then debated and is awaiting action. Relatives of missing persons stressed that the receipt of the death certificate was not to be understood as a substitute for clarifying what happened to the missing person or to finding and returning the body if possible.

101. The Government of Sri Lanka has instituted a compensation scheme for the victims of human rights violations and their families. The Working Group was informed by the Government, however, that this scheme applied in the first instance only to families of military or civil servants killed by terrorist groups in the south (i.e. JVP). This scheme was then extended to cover the families of all civilians killed by such terrorist groups. It has since been proposed that this scheme should be extended to the north-east to victims of the LTTE or related terrorist groups.

102. The scheme has not been applied to the families of disappeared persons persons killed by groups operating with the support, knowledge or acquiescen of the authorities. Although in a very few cases individual compensation ha been obtained through the courts for violations of fundamental rights, the vast majority of victims' families are not able to avail themselves of this possibility. Most live in rural areas far from the courts, they are not knowledgeable as to how to initiate or carry out the procedure, they are not likely to obtain legal aid and they are fearful of reprisals. The Working Group was told that even many of the lawyers in the rural areas are not trained in petitioning for redress of fundamental rights violations and that they have either been threatened or are otherwise fearful of reprisals. The families of disappeared persons told the Working Group that a compensation scheme for them is important for this reason.

IV. NON-GOVERNMENTAL ORGANIZATIONS, GROUPS AND INDIVIDUALS

103. During its follow-up visit, the Working Group again met a wide range of non-governmental organizations, community groups, members of religious groups and individuals working throughout Sri Lanka. In particular, the Working Group met the Sri Lanka Bar Association, the Civil Rights Movement of Sri Lanka (CRM), INFORM, the Organization of Families and Relatives of Disappeared, the Batticaloa, Trincomalee and Amparai Citizens' Committees, the Movement for Interracial Justice and Equality (MIRGE), the Law and Trust Society, the Organization of Relatives of Detainees Under Emergency Regulations (ORDER), the Human Rights Centre, Lawyers for Human Rights and Development, the Mothers Front, the Legal Assistance Programme, the Humanist Writers Front, the Organization of Lawyers for Muslims, the Muslim Information Centre and others.

104. The Working Group was informed that the Families of Disappeared and the Citizens' Committees have transmitted numerous cases to the Commission of Inquiry into Involuntary Removal of Persons for clarification. First of all, they proved to have an incomplete understanding of the objectives and working methods of the Commission. Secondly, they conveyed their concern that out of the six cases examined by the Commission as to responsibility, only one had resulted in a final order that no action should be taken. The Working Group was told that as far as impunity was concerned, the existence of the Commission did not appear to have had a deterrent effect.

105. Thirdly, they expressed concern to the Working Group that although the Commission had undertaken serious investigations in cases of disappearances alleged to have been carried out by the police, no cases in which the military might be implicated had been followed up. It was also pointed out that the Commission found registration of detainees lacking in most cases.

106. Non-governmental organizations told the Working Group that it had come to their attention that certain non-disclosed places of detention were believed to exist: the Gonahena-Kadawatha bunker believed to be within a Special Task Force centre; the Sinhapura-Polonnaruwa detention camp; another at the Pellwatte Sugar Cultivation in Badulla district; bunkers at the Monkey Bridge camp in Trincomalee and bunkers at Plantain Point camp in Batticaloa were cited.

107. In July 1992, the Lawyers for Human Rights and Development, which took up many cases of human rights violations and filed numerous petitions of habeas corpus on behalf of disappeared persons in several districts, received telephone threats, offices were broken into, one employee was chased and another was accosted at gunpoint.

V. INFORMATION AND VIEWS PROVIDED BY GOVERNMENT OFFICIALS

108. During the visit of the Working Group, senior government officials gave their views on developments which had taken place in Sri Lanka since the previous visit in 1991. Some of the elements of these views are reflected in the preceding chapters. This section deals with other matters discussed with the authorities.

A. The question of violence

109. Government officials reported that in general the situation was calm in the Southern Province, while in the north-east a war was being fought in which the army was gradually clearing certain villages which were subsequently handed over to the police for civil administration, while the military maintained a presence only for military operations.

110. The LTTE remained in control of an important part of the north, while in the east it was carrying out a guerrilla-style war, mainly in rural areas because towns and villages were very closely guarded by the police and the army. The LTTE often carried out terrorist operations whose victims were hundreds of innocent people not involved in the war, mainly Muslim villagers. In fact, the LTTE had undertaken an "ethnic cleansing" in certain areas with a mixed population of Tamils, Sinhalese and Muslims, who had lived together peacefully in the past. LTTE terrorist acts were aimed at instilling terror in the non-Tamil population and driving them out so that only Tamils would remain. This in turn would reinforce the LTTE's demands for a separate, enlarged territory. Thousands of Muslim and Sinhalese displaced persons had been forced to leave behind all their possessions in order to save their lives.

111. The Working Group was informed that Muslim Home Guards, as well as elements of Tamil Ealam Liberation Organization (TELO) and the People's Liberation Organization of Tamil Ealam (PLOTE), assist the army and the police in protecting villages. They have been the target of attacks by LTTE for this reason. They do not engage in independent action. The Home Guards were civil defence forces recruited on a purely voluntary basis and were trained and controlled by the police. According to the military authorities in Colombo, Home Guards are recruited and administered by the police but are under military control when there is no police station close to the place where they are operating. Their task is to help the army defend the villages. They are given basic training and shotguns. Home Guards are often afraid to remain in villages because they are easily identifiable and could be targets for LTTE attacks; in such cases a detachment of the army may be posted there. The military authorities admitted that in certain cases, Home Guards had left the villages for reprisals operations when attacks by LTTE had resulted in Muslim women and children being killed and justified those incursions as an angry reaction against provocation. However, such incidents had been rare, those responsible identified and some of them prosecuted.

112. Some authorities conveyed the view that the emergency regulations could not be repealed in the south, because many people were armed and looting of arms caches had taken place recently which could indicate that a JVP

resurgence was being prepared. Furthermore, there was the problem of JVP leaders and militants who were still in detention and would be released if emergency regulations were restricted to war areas; they were believed to be very dangerous and ready to take up arms again. Some groups of JVP supporters had already resurfaced in certain universities and, although the armed insurgents had been defeated, their ideology was alive, particularly among those in detention.

113. However, the Government was examining the proposals of the Centre for Human Rights of the University of Colombo for repeal or revision of certain emergency regulations. No consideration was being given to a revision of the Prevention of Terrorism Act, which was not promulgated under the Public Security Ordinance but was enacted following normal legislative process.

B. The question of disappearances

114. According to several government authorities met by the Working Group, the Government, in its determination to put an end to disappearances, had taken a number of very serious measures aimed at stopping the practice. In fact, disappearances had decreased significantly during the last year; they continued to occur but on a much smaller scale. Instructions and orders had been implemented in all provinces, except in conflict areas. The ICRC had verified that most of the people detained for questioning were released.

115. Government officials considered as impracticable a recommendation made by the Working Group in its previous report on the need to investigate cases which had occurred in 1983, as this would be very difficult.

C. The death compensation scheme

116. According to information received from the Government, a death compensation scheme exists which is applicable to deaths and injuries caused by ethnic conflict, terrorist activities and consequent civil strife that have occurred from 24 July 1987 to date. This scheme is being applied throughout the country, covering terrorist activities in the north and JVP activities in the south. Victims of violence perpetrated by government officials are not entitled to compensation under this scheme.

D. Draft law concerning temporary death certificates

117. The group received from government officials a copy of the draft of a bill currently under consideration by a cabinet subcommittee which would facilitate the issuance of death certificates in relation to missing persons. The draft law provides that "where any person has been missing for a period of over six months and is believed to be dead, the dependant of such person may make an application in the 'Form A' set out in the Schedule of this Act for a temporary certificate in respect of that person, to the assistant Government Agent of the Division in which such person was resident". Every such application shall be supported by an affidavit. This draft law mainly covers

cases in which money or property cannot be claimed or recoverd due to the absence of a death certificate. A summary procedure is established in the draft bill to obtain such temporary certificates, which will be received as evidence of a death to which it relates for the purposes specified therein.

E. Draft law to establish a Human Rights Commission

118. The text of a draft law, which has been with the Minister of Justice for over a year, was given to the Working Group by Sri Lankan authorities. It provides for the establishment, at the national level, of a Human Rights Commission consisting of 11 members appointed by the President of Sri Lanka, in consultation with the leader of the opposition and the leaders of recognized political parties. The objectives of the Commission in the draft law are described as follows:

"(a) To promote the equality and dignity of human beings, and the encouragement of general respect for all human rights and fundamental freedoms for all without distinction of race, sex, language, religion, caste, political opinion or place of birth;

(b) To take all actions and measures that are necessary to ensure the promotion of human rights and fundamental freedoms, and the elimination of discrimination on the basis of race, sex, language, religion, caste, political opinion or place of birth;

(c) To establish mechanisms whereby the protection of human rights and fundamental freedoms and the elimination of discrimination will be guaranteed;

(d) To promote the peaceful resolution of conflict within the framework of a democratic and just social order;

(e) To document and monitor all violations of human rights and fundamental freedoms, especially widespread and systematic violations, and those violations affecting minorities and disadvantaged groups".

119. For the purpose of promoting human rights and fundamental freedoms and eliminating discrimination, the Commission will have, inter alia, the power to investigate complaints; to initiate studies; to resolve disputes through mediation and conciliation; to invoke the jurisdiction of the Supreme Court for adjudication where mediation is not appropriate and/or has not been successful; to conduct public education programmes; to monitor and document violations of human rights and fundamental freedoms; to provide advice to the Government and private institutions or individuals on human rights norms in legislation and practice and to examine legislation and administrative practice to ascertain its degree of compliance with fundamental rights as recognized in the Constitution. The draft law also includes procedural provisions concerning the Commission's inquiries into human rights violations and its activities to resolve complaints by way of mediation and conciliation. A number of provisions relating to other activities of the Commission are also included in the draft law.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

120. The present conclusions should be read in conjunction with those submitted in last year's report. For easy reference they are included in annex I to the present report.

121. The Working Group wishes to state at the outset that it is grateful to the Government of Sri Lanka for inviting it to come and visit the country a second time. Once again the cooperation of government authorities, at all levels, was most generous and information was candidly provided. Likewise, non-governmental sources and private individuals contributed to the successful completion of the mission and the Working Group is indebted to them as well.

122. The members of the mission were impressed with the atmosphere of openness and transparency that prevailed in its contacts with all government officials, ranging from civilians in Colombo to army officers in detention camps outside Ampurai. That overall attitude, already noticed at the time of the first visit, was found to be consolidated and more generalized during the second visit. Particularly striking was the readiness to impart information that might possibly be embarrassing to the Government. Also, the Working Group found that the Sri Lankan authorities were even more positively disposed than last year squarely to confront human rights problems and consider remedial action. The responsiveness of the Government to the Group's suggestions was again impressive.

123. Over the past year, the war in the north and north-east of Sri Lanka has assumed more menacing proportions. In particular, a number of recent events do not seem to augur well for the future, as they represent examples of spiralling violence in established war zones as well as geographical expansion of the conflict through acts of terrorism. On the day of the Group's departure, the Tamil Tigers staged a simultaneous attack on four remote Muslim villages near the eastern seaboard, killing over 150 men, women and children. Also, Muslim Home Guards, trained and armed by security forces, carried out retaliatory raids on Tamil villages with scores of victims. More recently, the commander of the Sri Lankan Navy was killed in a suicide bomb attack in Colombo that left several people dead. The assassination marked the first major LTTE action in the capital in over a year. Compounding the security situation was a series of attacks in the south of the country, which, the Government claims, may mark an incipient resurgence of the JVP movement.

124. These developments come at a time when prospects for an early breakthrough towards a political resolution of the conflict in the north appear bleak. At present, intermittent negotiations between the Government and other parties concerned continue at different levels, both formal and informal. One important issue is how the LTTE is to be incorporated in the negotiating process, and if so, under what conditions. The future relationship between the north and east is the most important substantive item

for the negotiations. In particular, discussions seem to centre around the extent to which power would be devolved to the regions and whether this would take place within a unitary or a federal state framework. Thus far, it appears that little progress has been made in these negotiations.

125. Meanwhile, the LTTE remains focused on founding an independent State on the island, a goal which no Government is likely to concede. Opinions differ on the possibilities for a military solution to the conflict but, invariably, observers are of the view that any such attempt would result in heavy casualties on both sides as well as extensive loss of life and property among the civilian population. In that event, the observance of humanitarian principles and human rights norms would be reduced to an illusion.

126. The Working Group has observed that, despite these serious reverses, the scale of human rights violations is, on the whole, far less dramatic than last year. Inasmuch as the number of disappearances is seen as a barometer of human rights observance, it should be pointed out that the downward trend had already begun at the time of the Working Group's previous visit and continued during the following year. For 1992, 62 cases were reported to the Group, against 146 cases for 1991. An objective assessment of the overall human rights situation would require an analysis of other types of violations as well, notably arbitrary detention, torture and summary or arbitrary execution, not to mention other rights such as freedom of the press and freedom of association. Such analysis, however, falls outside the scope of the Working Group's present report.

127. The question why the number of disappearances has declined dramatically may have to be answered differently depending on the circumstances. In the south, the quashing of the JVP movement at the end of 1989 marked the end of an anti-insurgency campaign that had produced a large number of disappearances. It was followed by a period of relative social tranquillity in the region, obviating the need for harsh repressive measures and, as a result, the number of disappearances rapidly diminished. On the other hand, in the north and north-east of the country, the number of disappearances imputed to the security forces over the past year has not nearly attained the levels of the months immediately following the resumption of hostilities in June 1990. During those months, the army and the police had apparently received a much wider latitude than today for restoring law and order as they saw fit. At the present time, the Government's efforts to reduce excessive use of force in dealing with the insurgency appear to have been largely effective.

128. Nevertheless, disappearances persist in Sri Lanka at a level that should be of serious concern to the Commission on Human Rights. Apparently, despite the Government's policy to eliminate the phenomenon altogether, it is difficult to prevent any further victims from disappearing. For 1992, the majority of cases dealt with by the Working Group have been clarified, but it does not alter the fact that they happened in the first place.

129. Most of the cases are ascribed to the military and the Special Task Force of the police, sometimes assisted by Home Guards and certain Tamil groups. Although in the north and north-east all these entities come under the control

of the Joint Operations Command, it is important to note that marked differences exist between one department or district and another, depending principally on the officer in charge. In certain areas, police or army units appear to act with more restraint than in others and sometimes a series of disappearances could be traced to individual lower-ranking officers. In a circumscribed area, the Special Task Force of the police managed to develop a good rapport with the local population, while in other areas the STF was still being intensely feared for its modus operandi. Frequent transfers of commanding officers, as presently undertaken by the Government, may eventually eliminate such disparities.

130. Clearly, the Government has instituted a policy to bring down the number of disappearances and to improve the overall situation of human rights. Apart from measures referred to above, the Government is in the process of establishing a National Commission on Human Rights with a broad mandate, an initiative full of potential.

B. Follow-up to recommendations

131. The Government has also announced that it has accepted the recommendations of the Working Group as contained in the Group's 1991 report. The Group noted, however, that few of its recommendations had been implemented as yet. Such implementation would in the Group's view help to address effectively many of the problems relating to the phenomenon of disappearances in Sri Lanka. The Commission on Human Rights may wish to follow developments closely in this regard from year to year.

132. The Working Group does not propose to discuss all of its recommendations point by point. Reference is made to the previous chapters, notably chapter II. The Group would, however, like to offer further comments along two different lines: on the one hand, action taken to deal with past cases of disappearances, and on the other hand action on preventing disappearances in the future.

133. At the present time there is no official mechanism in place in Sri Lanka with the principle task of clarifying the fate and whereabouts of the more than 12,000 outstanding cases of disappearance reported to the Working Group. The Presidential Commission on the Involuntary Removal of Persons only looks to the immediate past and in any event its main responsibility is preparing the prosecution, if any, of officials held responsible for disappearances; its task is not the tracing of missing people themselves, at least not in the first instance. Apart from that, the Commission lacks the attributes to be wholly effective in either area, as outlined in last year's report. Furthermore, the Human Rights Task Force concentrates on current detention practices and can only hope that some of the disappeared who have survived their ordeal may show up in a place of detention somewhere in the country. Such cases are rare.

134. The Working Group is aware of the magnitude of the problem and the practical difficulties involved in clarifying cases. Clarification is not only a matter of scale, but also requires the availability of sophisticated techniques in the field of forensic science, which may not be easily found in

Sri Lanka itself. The fact remains, then, that the Government has thus far not taken action on a pivotal recommendation of the Working Group. During its second visit the Group was informed that the Government had no intention of establishing any such tracing mechanism at the present time.

135. In its previous report, the Working Group recommended the vigorous prosecution of those responsible for disappearances. Even though, formally, a disappearance as such does not at present constitute a crime under Sri Lankan law, prosecutions might be set in motion on account of acts which form the constituent elements of a disappearance and for which persons can indeed be held criminally liable, for example arbitrary arrest, unlawful detention and failure to produce before a court of law. The Group, in its previous report, referred to the virtual absence of such prosecutions. During its second visit the Group found the position had not improved. For an Attorney-General's office capable of bringing an indictment within 24 hours after the fact when such is deemed to be expedient, it should also be possible to initiate prosecutions in notorious cases of disappearance. A stark example is the disappearance of the 31 students in Embilipitiya. Several independent investigations have already been carried out into the case, and the Human Rights Task Force - itself a government institution - has even identified eight army officers as the ones responsible for the disappearance and possible death of the children. Yet, to this day, more than three years after the fact, it appears no indictments have been issued in the matter.

136. Other examples exist where no progress can be reported on the prosecution of those responsible for disappearances, such as the abduction and subsequent death of Richard de Zoysa. The recent trial in the well-publicized Kokkadichcholai case has not assuaged the sense of injustice which the case had provoked, perhaps even the contrary. The 1991 massacre of at least 67 civilians resulted in the acquittal by a military tribunal of 19 soldiers and the conviction of the commanding officer on lesser charges. On the other hand, the very fact that the prosecution and conviction were carried through to the end is itself an encouraging precedent, which hopefully will be emulated in other cases.

137. It would be an important indicator of the Government's resolve rigorously to pursue important cases of disappearance if the number and speed of the police investigations and prosecutions could be stepped up significantly. Even though, understandably, it would hardly be possible to establish criminal liability in all cases of disappearance over the past 10 years, indictment and conviction in particularly heinous cases would enhance, in the eyes of the public at large, the credibility of the administration of justice and restore trust in the rule of law. At the same time, it may help to bring an end to the climate of impunity still prevailing in the country and promote national reconciliation.

138. The Government has meanwhile provided for monetary compensation of victims of violence, including their families. The scheme pertains at present to violence perpetrated by non-governmental groups. Relatives of people who have disappeared at the hands of government forces are not as yet eligible for such compensation. Ideas for enlarging the scope of the compensation plan are said to be under consideration by the Government. Although such enlargement

would in itself be commendable, it should in no way be viewed as a substitute for efforts to clarify the fate and whereabouts of the missing persons. The latter is true for expediting issuance of death certificates in cases of disappearances, as recently initiated by the Government.

139. Then there is the matter of prevention of disappearances in the future. In its previous reports, the Working Group has highlighted the present security legislation of Sri Lanka, notably the Prevention of Terrorism Act and a number of emergency regulations, and shown how they may contribute to the occurrence of disappearances and concomitant violations of human rights. The Group has also made recommendations on the compatibility of these various rules with international human rights norms subscribed to by the Government of Sri Lanka. The Group wishes to reiterate its concern about the present status of the security legislation. In case there should be a resurgence of violence comparable to that of recent years, such legislation might again exacerbate excessive use of force and abuses of human rights, unless special safeguards are devised and introduced into the body of the existing security laws. This appears all the more necessary since the Government has taken no substantive steps as yet to change the current security legislation. An independent academic institute, with participation of some government officials in their private capacities, has taken the initiative of testing the prevailing emergency regulations against accepted international norms. It has meanwhile submitted a series of recommendations, but what will become of them remains to be seen.

140. Apparently, the inclination among certain official circles is to strengthen security legislation rather than reduce its scope. Of particular concern is a recent and sweeping addition to the emergency regulations whereby security forces apparently have been given the power to conduct house searches at will anywhere in the country.

141. One final point on this matter is the complexity of the present security legislation and the fact that it is not easily accessible to the general public. Lawyers, police and army officials encountered by the Working Group were not always sure of their position when discussing the various ramifications of these rules. Lawyers contacted by the Group, disagreed on their scope and contents. Undeniably, these circumstances are hardly conducive to uniform, predictable and equitable application of the law.

142. Another important recommendation, in the Working Group's view, concerned the improvement of registration procedures in cases of arrest and detention. The members of the mission found registration procedures in the field to be cumbersome and often defective, particularly as regards detention centres operated by the military. In the Group's experience the measures proposed might contribute significantly to the prevention of disappearances. Unfortunately, the Group is unaware of any such measures having been put into effect. Instead, the Human Rights Task Force, an independent institution, has assigned to itself the task of keeping track of essentially all detainees in the country and army and police officials have been requested to supply it with pertinent information.

143. Several comments are in order as regards this particular aspect of the HRTF's operations. First of all, there is no legal obligation for the security forces to supply information to the HRTF under emergency regulations 18 and 19. Secondly, the resources of the HRTF appear inadequate for undertaking such a comprehensive task. The ICRC in Sri Lanka employs over 150 people throughout the country to keep track of detainees and possesses sophisticated databanks and other attributes. Thirdly, and most importantly, the registration of detainees is a task that falls on the Government itself and should not be delegated, even informally, to an institution that is not answerable to the Government. It would be more appropriate if the Government would carry out its own responsibilities in this regard and assign a comptroller's function to the HRTF.

144. As stated on many different occasions by the Working Group, habeas corpus is the single most important tool for preventing a case of arbitrary detention turning into a case of disappearance. In its report on the previous mission, the Group pointed out a number of deficiencies in the law and practice of habeas corpus in Sri Lanka. The Group regrets that, due to misinformation, it did not do full justice to some remedial measures that had already been undertaken at the time. But most of the deficiencies highlighted still prevail, and the Group is unaware of any further measures having been taken during the past year to ameliorate them.

145. Finally, a well-informed and well-established human rights community (non-governmental organizations, citizens' committees and the like) may help to engage in early warning whenever a resurgence of large-scale human rights violations seems imminent. As such they tend to play an important role in the prevention of violations, including disappearances. In addition, they have a vital function, as in any democratic system, of critically monitoring government conduct in the area of human rights. Also, they are indispensable for helping ill-informed citizens find the way towards remedies which might otherwise remain unattainable for them. It is therefore all the more disquieting that a number of such non-governmental organizations complained that they are being harassed to the point where they hardly dare operate in a free manner and where some of their members have themselves become victims of disappearance.

C. Recommendations

146. All recommendations submitted in the report on the previous mission remain valid. In addition, the Working Group would like to offer the following:

(a) In order to put a halt to disappearances, the Government should seriously consider undertaking a general overhaul of its emergency legislation relating to arrest and detention with a view to ensuring that it conforms to Sri Lanka's international obligations on the matter and that it is proportionate to the exigencies of the situation on account of which the state of emergency is being maintained. Notably, the Government may wish to consider a territorial limitation on the state of emergency;

(b) It would appear necessary in the security legislation to impose stricter obligations upon officers in charge of its implementation. Such obligation should cover matters such as the recording of detentions and transfers, the obligation to obtain, within a minimum period, a detention order or to release the detainee without such an order, the obligation to inform detainees of the reason for their detention and to respect their right to have recourse to a competent authority for a review of the detention order, and the obligation rapidly to put into effect orders received from competent courts. Also, provisions may be included which require informing relatives of the place of detention and providing detainees with easy access to legal counsel. Furthermore, appropriate sanctions for those officers who fail to comply with their obligations should be established in the legislation. Finally, the members of the security forces under investigation for serious violation of human rights should be temporarily suspended until final disposition of their case;

(c) The Government may wish to consider attracting forensic expertise from abroad, through the United Nations, for the purpose of identifying possible victims of disappearances in particularly egregious cases, such as in regard to the mass grave discovered in connection with the Embilipitiya case;

(d) The Government may wish to consider becoming a party to Protocols I and II Additional to the Geneva Conventions of 12 August 1949 relating to the laws of war.

147. There is no doubt that the situation regarding disappearances in Sri Lanka continues to be serious. It would therefore seem necessary to follow closely any further progress in the implementation of the Working Group's recommendations.

Annex I

CONCLUSIONS AND RECOMMENDATIONS OF THE REPORT OF THE WORKING GROUP ON ITS FIRST VISIT TO SRI LANKA

A. Conclusions

The Working Group's visit to Sri Lanka at the invitation of the Government, was very productive in terms of effective use of time and as regards the copious amounts of information assembled on the different aspects of the problem. This was due first of all to the large measure of cooperation extended to the Working Group by the Government of Sri Lanka. Furthermore, many human rights groups and other non-governmental organizations, as well as private individuals, greatly facilitated the completion of its task.

The Special Rapporteur on summary and arbitrary executions had similarly been invited by the Government, but the visit did not take place owing to circumstances unrelated to Sri Lanka. This year, many foreign human rights groups have been allowed to come to the island, demonstrating the openness of the country's authorities. In particular, the presence of the International Committee of the Red Cross (ICRC) was welcomed as a positive step on the part of the Government and a sign of its commitment to international law.

The political system of Sri Lanka is a parliamentary democracy, whose tradition since independence goes back to the Soulbury Constitution of 1948. Democratic ideas seem firmly embedded in society. For 20 years, there have been organized efforts to protect human rights in the country, starting with the formation of the Civil Rights Movement in 1971. The present Constitution contains the most important of these basic rights. Sri Lanka is a party to the major international human rights and humanitarian instruments, including the International Covenants and the Geneva Conventions.

Professedly a peace-loving nation, guided in large part by the pacifist teachings of Buddhism, the people of Sri Lanka have nevertheless witnessed outbreaks of violence, sometimes extreme, ever since the 1950s: internecine strife among members of different ethnic communities; violence of militant groups; and violent suppression of revolt by security forces.

Furthermore, the process of development and the expectations of a population which has recently achieved a literacy rate surpassed in Asia only by Japan and the Republic of Korea, has called into question many of the basic values of traditional Sri Lankan society. A heavily mortgaged economy, high unemployment, especially among youths and rural workers, increasing poverty, and the breakdown of political processes, have obviously all had an extremely detrimental effect.

The context in which the phenomenon of disappearances has materialized in Sri Lanka largely arises from two major sources of conflict: first and foremost, the confrontation of Tamil separatist militants and government forces in the north and north-east of the country; secondly, the confrontation between the People's Liberation Front (JVP) and government forces in the south. Both confrontations have a political and a socio-economic background.

Both conflicts have produced violence, by the Liberation Tamil Tigers of Ealam (LTTE) in the north and north-east and by JVP in the south. In the south, JVP resorted to violence and terrorism against members of the ruling party. It extended its terrorism not only to the security forces (both military and police), but also to the families of these authorities. In the north and north-east, the Tamil Tigers have also used violence for the purpose of instilling terror in the civilian population. These armed conflicts have caused serious damage to the economic infrastructure of the country.

A State has the right to use force, but in modern times it is universally agreed that its use is not without limits. It is subject to non-derogable legal norms, such as the ones regarding the right to life and security of the person, laid down in the International Covenant on Civil and Political Rights and the Geneva Conventions and Protocols. Disappearances and other violations of human rights most frequently occur in situations of generalized violence and excessive and undirected use of force. In the Sri Lankan context, observers of events in the country tend to agree that, in view of the situation that eventually developed, the use of State force per se, both against LTTE and against JVP, did not contradict international legal norms. However, in the course of that use of force, human rights violations have been committed, particularly as regards non-combatant civilians. Most of these violations (arbitrary executions, torture) lie outside the Working Group's mandate (see chapter I). The fact remains that the Group has recorded up to 12,000 cases of disappearance between 1983 and the present.

It should be pointed out that this figure does not include abductions by non-governmental forces, such as LTTE and JVP. Under the present description of a disappearance (now in the process of being elaborated into an international legal norm) the case has to involve a person who is arrested or detained, against his will, by officials of any branch or level of government or by an organized group or private individuals allegedly acting on behalf of, or with the support, permission or acquiescence of the Government. In accordance with its methods of work, the Working Group entertains cases of disappearance only when it is informed that government forces have somehow been involved.

The Working Group wishes to emphasize that the cases of disappearance alleged to have occurred in Sri Lanka rank as the best documented cases among those from the 40-odd countries appearing in the Group's annual reports to the Commission on Human Rights. The information given in each case of disappearance in Sri Lanka not only contains the basic necessary elements, but often details such as the names of arresting officers, places of detention or licence numbers of the transport vehicles used.

The Government maintains that many people reported disappeared have actually fled the country (see chapter V). The Working Group is not in a position to verify this, but in view of the highly specific and reliable information available on each case the Group has registered, that explanation would not seem to be applicable to most of these cases. The flight explanation may apply to persons who, following their arrest and subsequent release or escape from custody, have either not kept in touch with their

families or whose families have not taken the trouble to notify the Working Group through the recipient of the original complaint. The Group, as stated above, has at present no information to suggest that there are many cases of this kind.

The Government, in many cases, has replied that the person in question has escaped or has been released. Again, this may be true in some instances. In one case, however, a person listed as disappeared was witnessed dying in a police cell by a fellow detainee. Subsequently, his cell was marked "released". Testimony such as this dictates a certain prudence in accepting explanations of release or escape at face value. In any event, under the Working Group's methods of work, escape and release cases are taken up directly with the relatives of the disappeared, who must verify the response of the Government.

The Government has stated that in many cases the missing person used an alias at the time of detention and that, for this reason, families inquiring about their missing relative and submitting the real name could not be properly informed. This may well be true. The Working Group, however, received numerous cases in which families inquiring during the first 72 hours after the arrest were denied access to the local places of detention to identify their relative by sight. In addition, registers often failed to record the names, be they real names or aliases, of persons known to have been in detention.

The Working Group would like to add that, in some cases, ICRC may have notified the family of the fate or whereabouts of a missing person who also appears on the Group's files. The family, once informed, would not necessarily take the trouble of referring back to the Working Group through the original channel of communication.

The overall number of cases, therefore, may in reality be somewhat less than that reported to the Working Group: precisely how much cannot be estimated. The remaining figure is still substantial and by far the highest number ever recorded by the Working Group for any single country. In addition, it should be stressed that the Working Group cannot be sure of having recorded all the cases said to have occurred in the country. On the contrary, testimony seems to suggest there are many more. Furthermore, the Group has not yet been able to process all the cases it has received, and new denunciations relating to the last few years are still flowing in. Lastly, the incidence of disappearances in Sri Lanka may have decreased, but is not negligible at present. The Group has so far received over 1,000 cases alleged to have occurred in 1991, 40 from the south, the others from the north-east. It is believed that a small number of these missing persons may still turn out to be detained in detention camps housing suspects under the state of emergency. Hope also remains for some of the missing persons who were transferred to Colombo. Tracing is difficult, despite persistent efforts by ICRC, in view of the limited resources put at the disposal of the governmental Task Force on Human Rights (see chapter II). Tracing has been an ongoing problem, particularly in cases of frequent transfers of suspects from one

place of detention to another, ultimately leading to disappearance. Also, despite an extensive detention registry system in the country, many reports indicate that, frequently, registration requirements were purposely disregarded.

On the basis of the material available, the Working Group concludes that both in the north and in the south, the army, and predominantly the police in the south, have been involved in disappearances. Death squads, which given the circumstances could only have operated with the acquiescence of government forces (see para. 31 above), have been involved as well. Also implicated were civil defence units, armed and trained by the army.

The next question is what factors have facilitated the practice of disappearance. Attention is drawn to the security legislation of Sri Lanka, which seems to have contributed appreciably to the phenomenon. Notably, the Prevention of Terrorism Act, permanent since 1982, provided the authorities charged with counter-insurgency operations with wide latitude for action. The Act allows a person suspected of a crime against the security of the State to be arrested preventively and "to be kept in custody of any authority, in such place and subject to such conditions as determined" by the Minister of Defence (not the Minister of Justice). Experience in many countries shows that when persons are removed from the custody of trained civilian prison officers and handed over into military custody, abuses are likely to result.

Similarly, legislation promulgated under the state of emergency, in force since 1982 with few interruptions, seems to have a bearing on the incidence of disappearances. Chapter II contains a description of how powers of arrest are being exercised by a wide circle of law enforcement agents, including military personnel and vigilante groups. In addition, there is little doubt that Emergency Regulation 55 FF, of July 1988, has been conducive to uncontrolled activity by the armed forces. It permitted the disposal of dead bodies without post-mortem inquest, certification or even confirmation of identity, a measure essentially copied from a similar one in force for a short time in 1983. Even though Regulation 55 FF was repealed in February 1990, Emergency Regulation 55 A to F is still in place and dispense with many crucial rules of criminal procedure, such as judicial inquest in cases of death in custody.

The Working Group has also had occasion in the past to state that when a large group of people can arrest and detain a large group of other people on the basis of mere suspicion of offences that are not sufficiently circumscribed, dispensing with almost all of the normal due process guarantees, disappearances are bound to occur. Coupled with the possibility, under the law, of disposing of bodies without formalities, abuses become almost inevitable.

As a matter of public record, the Government considered that, since it was at war with JVP terrorists, all counter-insurgency methods were legitimate. It was publicly indicated that troops were not afterwards going to be questioned about how they had achieved their tactical and strategic objectives.

The public avowal by the late Minister for National Defence that the same strategy was going to be applied in the north against LTTE, as had been used against JVP in the south, should be a matter of concern. Early signs, such as the appearance of death squads in the north, are sufficiently ominous for the United Nations Commission on Human Rights to remain alert to further deterioration of the observance of basic rights in that particular area of the country.

The combination of the above factors appears to have stimulated a sense of impunity among the armed forces, fuelling disregard for basic human rights standards which they would have ordinarily tried to respect and observe. The sense of impunity was further stimulated, although not entirely warranted from a legal point of view, by the Indemnity Act covering the period 1977-1988 (see chapter II). As the Government pointed out to the Working Group, the Act was not intended to provide blanket immunity for members of the security forces who did not respect the rule of law; rather, it stated, indemnity should be applied when acts are carried out in good faith and in the execution of duty. The Working Group was presented with an impressive number of criminal cases pending against members of the security forces for offences ranging from murder to bigamy. The fact remains, however, that for grave violations of human rights, committed in the course of counter-insurgency operations, no convictions have been brought to the attention of the Working Group to date.

In response to reports of human rights violations, including disappearances, the Working Group acknowledges that the Government has demonstrated good will and extended full cooperation to it and to other United Nations representatives. The Government has also instituted a variety of investigations into particular incidents. Other forms of action include the setting up of civilian information centres and mobile legal offices.

In addition, over the last few years, the Government has created an array of commissions and task forces to deal with various aspects of the problem. It is not certain, however, whether all of these have the necessary powers and resources and whether at present they draw maximum advantage from the terms of reference provided to them. The Presidential Commission of Inquiry into Involuntary Removal of Persons, for example, is composed of senior retired judges. The Commission is restricted by the fact that it can only consider cases that have occurred after 11 January 1991. Compounding its predicament are the methods of work adopted, described by the Commission itself as "quasi-judicial". The process involves prosecuting and defence attorneys, written and oral arguments and public hearing of witnesses. After this lengthy process, the Commission may make a recommendation to the President to refer the case to the regular court system. If the President decides to follow the Commission's recommendation, the entire process must be repeated under the Code of Criminal Procedure.

The habeas corpus procedure in principle the most powerful tool available to complainants on disappearances is marred in Sri Lanka by the same deficiencies the Working Group has observed in other countries. Writs of habeas corpus can only be filed in the capital city, Colombo. Even for those who can travel the distance and avail themselves of legal counsel, results are on the whole disappointing. Usually, even if a writ is referred to a local

magistrate by the Court of Appeals, a flat denial of any knowledge on the part of the security forces terminates the procedure. A magistrate is not empowered to conduct any investigation in situ, for example by seeking access to places of detention.

The human rights community in Sri Lanka has reported harassment, threats and attacks. The Working Group was impressed with the courage and stamina they have displayed in pursuing their goals. Many members of local or national non-governmental organizations have disappeared or died in the course of the conflict in the north and south and many live in fear of reprisal even today. The Bar Association and legal aid societies cope with similar problems. In December, many non-governmental organizations came under cross-fire following the establishment of the Presidential Commission of Inquiry in respect of Non-Governmental Organizations. The Commission conducts public inquiries into non-governmental organizations activities over the past 10 years. According to a report of the International Commission of Jurists, it appears to have done so in a manner increasing the fear and nervousness of non-governmental organizations in carrying out humanitarian activities.

B. Recommendations

Finally, in the light of the above conclusions, the Working Group submits the following recommendations for consideration by the Government of Sri Lanka:

(a) The Government should take more effective measures to prevent disappearances.

(b) In view of the magnitude of the problem of disappearances in Sri Lanka, the Government should encourage more official condemnation of this practice and give greater publicity to such condemnation.

(c) The Government should pursue the clarification of disappearances even more vigorously. The setting up of various bodies has been an important step in this direction, but is not sufficient (see recommendations (j) and (k)). Human rights groups should be brought more closely into the search for missing persons, specifically as regards the identification of bodies discovered. In such identification, assistance might also be requested from an international team of forensic experts under United Nations auspices.

(d) In order to facilitate the search for missing persons, all government authorities in charge of temporary or permanent places of detention (such as army or police headquarters, barracks, camps, outposts, prisons) should be required to provide to the competent civilian authorities periodically updated listings of detainees under their custody. Registers of detention should preferably be kept in the office of the chief civil authority of a district. The latter should be empowered to visit at any moment any place of detention in the district in order to verify the data supplied to him, and should be required to report at regular intervals to the competent civil authorities in Colombo. The latter, for example the Attorney-General's Office, should maintain a central register of detention, supplied with information by the respective district authorities. Civil authorities in the

capital should be empowered to make spot-checks on places of detention. Adequate provision should be made for registration of transfers of detainees from one place of detention to another. Both the central and district detention registers should be accessible to interested parties, including non-governmental organizations and especially the press. Lists of detainees under the state of emergency should be kept up to date and regularly published. If scrupulously applied, these measures could have a strong preventive effect.

(e) The Prevention of Terrorism Act, the Emergency Regulations currently in force, as well as other pertinent parts of the present legislation, should be brought into line with accepted international standards regarding due process and the treatment of prisoners. Grounds for and powers of arrest, as well as grounds for the transfer of detainees, should be clearly circumscribed. Time-limits for bringing a person before a judge following his arrest should be drastically shortened, as the present time limits appear excessive.

(f) The Government should initiate a thorough overhaul of both the law and the practice of habeas corpus in order to expedite the present procedure and make it more easily accessible and generally more effective. In particular, petitioners for habeas corpus should be enabled to initiate the process within their district of residence, through the district magistrate. The magistrate should forward the petition to the competent court. Such a magistrate should be empowered by the competent court to enter, at his discretion, all places of detention with regard to a given petition.

(g) The Government should prosecute more rigorously those responsible for disappearances and require that severe disciplinary punishment be meted out to government officials who have failed to take adequate measures to prevent disappearances. In particular, the Group finds it necessary to emphasize that disregard for the requirements on registration of detainees should be severely dealt with, as well as acts of intimidation or reprisal against witnesses and relatives of disappeared persons.

(h) Acts found to involve grave violations of human rights, such as disappearances, should not benefit from indemnity legislation.

(i) Human rights records of members of the armed forces and the police should be taken into account in the consideration of promotions (a practice stated to exist in other countries of the region). Members of these forces under investigation for involvement in cases of disappearance should be suspended from active duty until inquiries are completed. The introduction of training courses on human rights and humanitarian law for army and police personnel, such as have been introduced in several other countries, should be considered.

(j) The Commission on the Removal of Persons, as well as the Human Rights Task Force, should be empowered to make spot-checks on any place of detention. Both bodies should be authorized to follow up reports received of clandestine places of detention. They should also be given more resources in order to discharge their mandates effectively.

(k) The Commission's mandate should be extended beyond January 1992 and the time limit should be removed to allow consideration of cases prior to 11 January 1991. In order for the Commission to cope with the resulting case load, a thorough review of its working methods should be undertaken. Instead of a time-consuming "quasi-judicial" process, the Commission might be encouraged to employ summary procedures which would expedite the consideration of cases. According to an alternative model, the Commission would merely try and establish whether there is a prima facie case of (involvement in) a disappearance, and if so, hand over the case to the civil administration of justice for prosecution and adjudication. The Commission should be encouraged to keep track of the whereabouts of a missing person once he has been located in detention. All subsequent transfers and releases should be registered. Also, the Commission should be requested to give more publicity to its findings in each case it has brought to a conclusion.

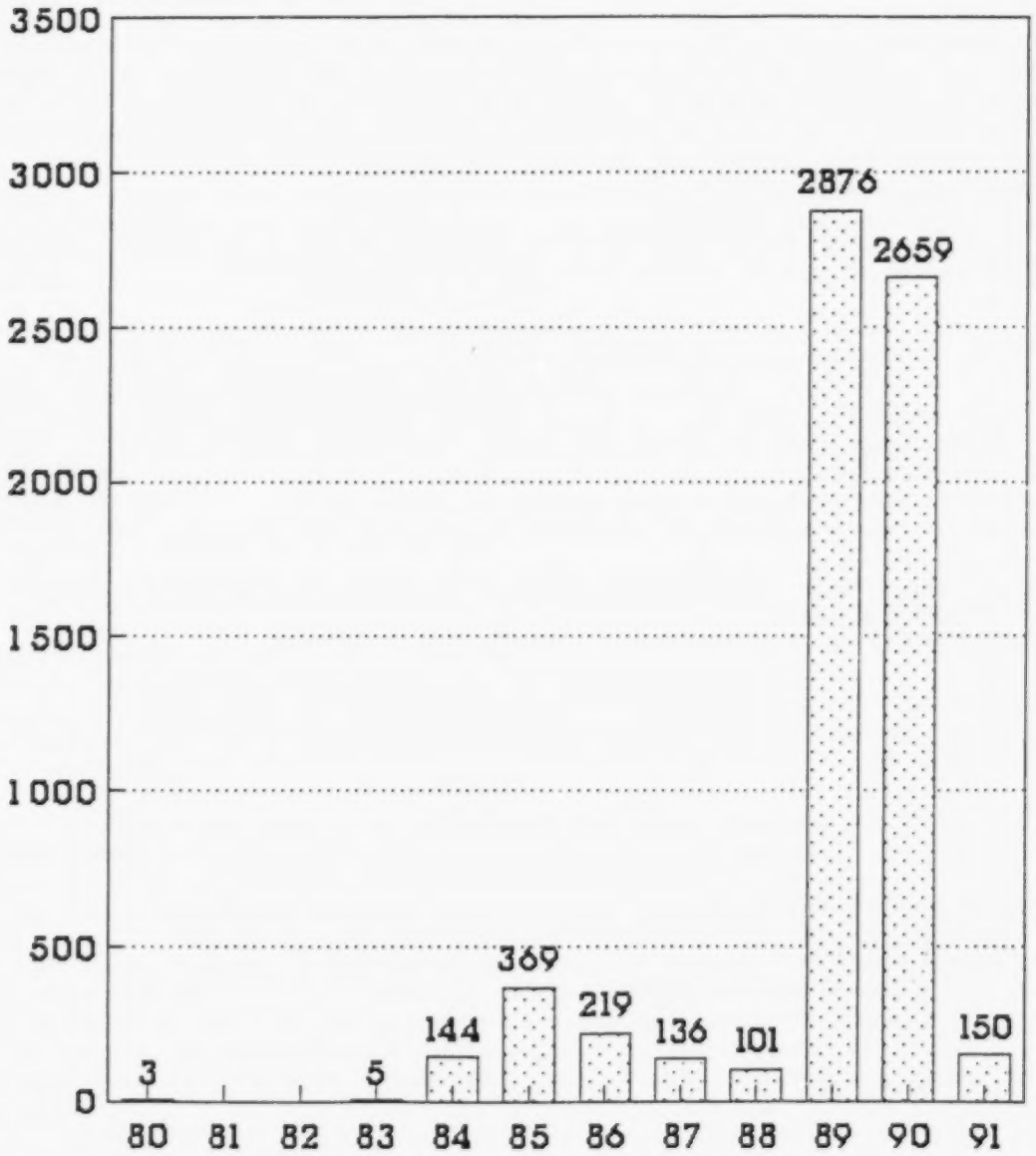
(l) Legal counsel assigned by the Commission or by the Sri Lanka Bar Association should be empowered to inspect police records.

(m) Civil defence units should only be formed on a purely voluntary basis, under the control of civil authorities. They should come under stricter control in terms of command structure, operations and supply of arms and ammunition. Care should be taken that only properly trained personnel in uniform are allowed to carry officially issued arms and use official vehicles in carrying out operations. This may prevent the present practice of civilian defence units in plain clothes arresting people at will, a practice about which the Working Group has received many complaints as having led to abuse.

(n) The Government should take more effective measures to protect witnesses and relatives of disappeared persons against any form of intimidation or reprisal and to prevent such incidents.

ANNEX II

CASES TRANSMITTED TO THE GOVERNMENT OF SRI LANKA FOR THE PERIOD 1980-1991



1/ The Graph for 1990 and in particular the one for 1991 is not representative of the number of disappearances reported for the corresponding year, due to a considerable backlog in the transmission of cases.